CARRIERS — CUSTODY AND CONTROL OF GOODS — WHEN RAILROAD BECOMES WAREHOUSEMAN. — Freight consigned to the plaintiff arrived at its destination and was placed in the defendant's depot from twelve hours to three days before the building and its contents were burned without negligence on the defendant's part. *Held*, that the lower court erred in ruling that the defendant is not liable. The jury should have been instructed that unless the plaintiff failed to remove the goods within a reasonable time after he knew or, by the exercise of reasonable diligence, could have known of their arrival, he can recover. *Lewis* v. *Louisville & N. R. R. Co.*, 122 S. W. 184 (Ky.).

There are three conflicting views as to how soon after the arrival of freight at its destination, a railroad's responsibility changes from that of common carrier to that of warehouseman. Some jurisdictions hold that liability as a carrier ceases as soon as the frieght is put in a proper place for the consignee to take it away. *Thomas* v. *R. R.*, 10 Met. (Mass.) 472. Others hold that such liability ceases after a reasonable time for removal. *Moses* v. *R. R.*, 32 N. H. 523. A third rule requires both that notice of arrival be given to the consignee and that he have a reasonable time thereafter to remove the goods. *Fenner* v. *Buffalo & St. Louis R. R. Co.*, 44 N. Y. 505. See 9 HARV. L. REV. 153. In the principal case the court follows an earlier *dictum* approving the New Hampshire rule and saying that notice need not be given to the consignee. *R. R.* v. *Cleveland*, 2 Bush (Ky.) 468. Since the carrier in fact undertakes both to carry and to give such warehousing as will be incidental to carriage, it is submitted that the exceptional liabilities of a carrier should cease as soon as the transit is in fact ended. Thereafter the liability should be only that of a warehouseman.

CONSTITUTIONAL LAW — POWERS OF THE JUDICIARY — INJUNCTION BY FEDERAL COURT AGAINST ENFORCING RAILROAD RATES FIXED BY STATE COMMISSION. — The Oklahoma constitution established a commission to fix railroad rates and provided for an appeal to the supreme court of the state, where, if the order of the commission was not affirmed, a new order of the same nature would be substituted. A railroad company was denied leave to give bond to suspend the operation of the order pending appeal. The company filed a bill in the federal court, alleging that the rates were confiscatory and praying a temporary injunction against the enforcement of the order. *Held*, that an injunction should issue. *Atchison, Topeka, & Santa Fé Railway Co.* v. *Love*, 174 Fed. 59 (Circ. Ct., W. D. Okl.).

It is admitted that the United States courts have power to enjoin proceedings under state legislation which is clearly unconstitutional. See *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19. And it is the better opinion that in determining rates, a commission acts in a legislative capacity. See *Interstate Commerce Commission* v. *Cincinnati, New Orleans, & Texas Pacific Railway Co.*, 167 U. S. 479, 499. *Contra*, *People* v. *Willcox*, 194 N. Y. 383. A statute which provides that the commission's determination of reasonable rates shall be conclusive is unconstitutional. *Chicago, Milwaukee, & St. Paul Railway Co.* v. *Minnesota*, 134 U. S. 418. And similarly, a commission cannot be created with judicial power to determine the reasonableness of the rates which it has established. *Western Union Telegraph Co.* v. *Myatt*, 98 Fed. 335. But under constitutional provisions and facts identical with those in the principal case, except that there was no attempted enforcement of the rates, it was held that no injunction would issue until the state court had passed upon the rates, since until then the legislation was incomplete. *Prentis* v. *Atlantic Coast Line Co.*, 211 U. S. 210. This decision was expressly limited to the actual facts presented. See 22 HARV. L. REV. 368. For this reason, the distinction taken in the principal case is justifiable although perhaps unnecessary. The result reached seems correct, for unquestionably there are proper grounds for equitable relief.

CORPORATIONS — CORPORATIONS DE FACTO — COLLATERAL ATTACK ON CORPORATION NOT COLORABLY ORGANIZED. — The plaintiff sold goods to a cer-

tain company which the associates represented as duly incorporated. A Massachusetts statute provided that no corporation should come into existence without the certificate of the Secretary of the Commonwealth, issued on the filing of its organization papers, which certificate should have the effect of a special charter. When the goods were delivered, the company had not attempted to comply with the statute, though it did so the following day. *Held*, that the plaintiff can replevy the goods. *Whiting & Sons Co.* v. *Barton*, 90 N. E. 528 (Mass.).

Questions as to collateral attack upon incorporation usually have arisen in this country where there has been partial, but not complete, compliance with the provisions of a general incorporation law. *Callender* v. *Painesville & Hudson R. Co.*, 11 Oh. St. 516. But under the Massachusetts statute this question should seldom arise. See MASS. ACTS OF 1903, c. 437, § 12. Yet the case of a naked assumption of the corporate privilege, that is, an assumption where there has been no attempt to comply with the provisions of any law authorizing incorporation, sometimes arises, as in the principal case. Under such circumstances, Massachusetts applies the common-law rule. No title passed to the corporation when the goods were delivered, for the supposed buyer did not then exist. *Penn Match Co.* v. *Hapgood*, 141 Mass. 145. So the associates could have been held to full liability. *Johnson* v. *Corser*, 34 Minn. 355. See *Finnegan* v. *Noerenberg*, 52 Minn. 239, 243. But the vendor elected to look to the goods. And it could hardly have been maintained that title had passed out of the plaintiff, for the plaintiff's only intent was to pass title to the corporate unit. See *Byam* v. *Bickford*, 140 Mass. 31. Nor was there evidence of a new sale after the corporation was formed. See *Pennell* v. *Lothrop*, 191 Mass. 357, 360. Nor was the plaintiff in any way estopped from asserting title. So the court rightly allowed collateral attack, refusing to consider the naked assumption as a foundation of rights. See *The Detroit Schnetzen Bund* v. *The Detroit Agitations Verein*, 44 Mich. 313.

EMINENT DOMAIN — COMPENSATION — RIGHT TO ENJOIN NUISANCE UNTIL COMPENSATION IS MADE. — An owner of land abutting on the defendant's railway brought a bill to enjoin its use until compensation had been made for the injury to the plaintiff's property by reason of smoke, noise, etc. *Held*, that the plaintiff is not entitled to the injunction. *Hyde* v. *Minnesota, D. & P. Ry.*, 123 N. W. 849 (S. D.). See NOTES, p. 471.

EQUITABLE CONVERSION — ORDER OF COURT FOR SALE OF LAND. — An absolute order of court was given for the sale of land subject to an incumbrance. The owner died after the order had been issued but before the sale was actually made. *Held*, that his next of kin are entitled to the surplus. *In re Estate of Stinson*, [1910] 1 Ir. 13.

If an executor is unconditionally ordered to sell land, the beneficiaries no longer have any equitable right in the land; and their right descends as personalty to their next of kin. *Hyett* v. *Mekin*, 25 Ch. D. 735. But it has been held in partition proceedings that if a legal owner die after the court has ordered a sale, but before the proper time for the completion of the sale, the heirs take. *Biggert's Estate*, 20 Pa. St. 17. For an order to sell does not of itself divest legal title. Nor should equity treat the title as divested until after the time when the sale has been ordered to be made. Thereafter the owner's interest is regarded as personalty, equity regarding as done what ought to have been done. In the principal case, if the deceased is regarded as having no legal title at the time of his death either because the incumbrance was of the nature of a mortgage or because the time fixed for the sale was earlier than the owner's death, the decision is analogous to the cases stated above. The case may also be rested on an artificial rule that the court's order of sale works an immediate conversion. See *Burgess* v. *Booth*, [1908] 2 Ch. 648. To apply such a rule is more convenient but less logical than to analyze in each case the true nature of the rights of the deceased.